



confidentiality merely must identify generically the type of services needed and the broad issues or topic (*e.g.*, innocence) for which the services are necessary.”). Mr. Murphy requires the services of a mitigation investigator to assist him in developing, preparing, and litigating a claim that trial counsel were ineffective for failing to reasonably investigate, discover, develop, and present mitigating evidence during the punishment phase of his capital murder trial.

Undersigned counsel has the ethical and professional duty to pursue any and all possible claims, investigating and reviewing the case anew. *See* GUIDELINES FOR THE APPT. AND PERFORMANCE OF DEF. COUNSEL IN DEATH PENALTY CASES 10.7(A) (2003) (“Counsel at every stage have an obligation to conduct thorough and independent investigations relating to the issues of both guilt and penalty.”). In order for counsel to comply with his professional responsibilities, including the need to protect confidential attorney work product, counsel’s request must be made *ex parte* and under seal. *See id.* at Commentary to Standard 10.4 (“Because the defense should not be required to disclose privileged communications or strategy to the prosecution in order to secure these resources, it is counsel’s obligation to insist upon making such requests *ex parte* and *in camera*.”); SUPPLEMENTARY GUIDELINES FOR THE MITIGATION FUNCTION OF DEFENSE TEAMS IN DEATH PENALTY CASES 4.1(A) (2008) (“Applications to the court for the funding of mitigation services should be conducted *ex parte*, *in camera*, and under seal.”); GUIDELINES FOR STANDARDS FOR TEXAS CAPITAL COUNSEL 12.2(B)(6)(a) (State Bar of Tex. 2006) (“Because counsel should not have to disclose privileged communications or strategy to the prosecution in order to secure these resources, counsel must insist upon making such requests *ex parte* and *in camera*.”); TEX. DISCIPLINARY R. PROF’L CONDUCT 1.05 (generally describing the need for confidentiality); *see also United States v. Abreu*, 202 F.3d 386, 391 (1st Cir. 2000) (“Defendants who are able to fund their own defenses

need not reveal to the government the grounds for seeking [an expert]. . . . To require indigent defendants to do so would penalize them for their poverty.”).

### **CONCLUSION**

For the foregoing reasons, Mr. Murphy’s request for leave to file the attached *ex parte* application for reasonably necessary services should be granted.

DATED: November 23, 2009

Respectfully submitted,

/s/ David R. Dow

David R. Dow

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**CERTIFICATE OF CONFERENCE**

No conference has been held because opposing counsel has not made an appearance in these proceedings.

s/ David R. Dow

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David R. Dow

**CERTIFICATE OF SERVICE**

On November 24, 2009, I served a copy of the foregoing pleading on the Office of the Attorney General by United States mail at the following address:

Office of the Attorney General  
Post Office Box 12548  
Austin, Texas 78711-2548

/s/ David R. Dow

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David R. Dow

